

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.879 OF 2002

Devanand Madhukar Hagavane,
Age 24 years, Occ.Nil,
R/o. Khavaspur, Ta. Sangola,
Dist.Solapur

...APPELLANT
(Original Accused)

Versus

State of Maharashtra

...RESPONDENT.

Mr.Vishwanath Talkute, Advocate for the Appellant.

Mrs.M.M.Deshmukh, APP, for the State.

....

**CORAM : S.B.MHASE &
SMT.V.K.TAHILRAMANI, JJ.**

DATED : JANUARY 12, 2007.

JUDGMENT (PER SMT.V.K.TAHILRAMANI, J.) :

1. Through this Appeal, the appellant-original accused has challenged the judgment and order dated 17th July, 2002 passed by the learned IInd Additional Sessions Judge, Pandharpur in Sessions Case No.118 of 2001. By the said judgment and order, the learned Sessions Judge, convicted the appellant under Sections 302, 324 and 506 of the IPC. For the offence punishable under Section 302 IPC the appellant was sentenced for life and fine

of Rs.1000/-; for the offence punishable under Section 324 IPC the appellant was sentenced to suffer R.I. for two years; and for the offence punishable under Section 506 IPC the appellant was sentenced to suffer R.I. for one year.

2. The prosecution case, briefly stated, is as under :

. The deceased Bapu Hagavane was residing at village Khavaspur, Taluka : Sangola. He resided in the said village alongwith his wife Rajabai (PW-3) and two daughters Dhanashri (PW-4), Kaushalya and one son. The accused-Devanand was also residing in the same village. Sunita (PW-6) a young unmarried girl was also residing in the said village alongwith her parents and sisters. Sunita was the daughter of the cousin brother of Bapu. She was residing in the vicinity of house of the deceased Bapu and Rajabai (PW-3). It is the prosecution case that the accused used to visit the house of Sunita (PW-6) after her parents had left the house for work. The accused and Sunita developed intimacy and the accused used to

visit the house of Sunita in the absence of her parents. Their affair was witnessed by Rajabai, deceased Bapu and others. Rajabai, therefore, informed the mother of Sunita that the accused-Devanand was visiting their house to meet Sunita in their absence. However, even thereafter there was no change in the behaviour of the accused and he continued to visit the house of Sunita in the absence of her parents. Rajabai and deceased Bapu both told the accused not to visit the house of Sunita in the absence of her parents. The accused was offended by this act.

. On 22.8.2001 at about 5:00 p.m. deceased Bapu as usual returned from work. Thereafter, PW-3 Rajabai at about 6:00 p.m. went to the flour mill for grinding grains. At that time her husband and children were in the house. She returned home after about half an hour. On returning home she saw that the accused Devanand was in her house and he was jostling her daughter Dhanashri (PW-4). In the said incident, Dhanashri sustained injuries on her cheek. PW-3 Rajabai saw that her husband was lying dead on the ground with

injuries on his person. She immediately raised shouts. Therefore, the accused gave threats to her that he would also stab her. The accused-Devanand gave knife blows over the right ear and on both the hands of Rajabai. Thereupon, on hearing her shouts her husband's brother Ramchandra (PW-7) reached there alongwith his wife, daughter and son. The accused-Devanand then threatened them. Before the arrival of Rajabai, the accused had lifted Kaushalya, the second daughter of Rajabai, and thrown her on ground. Even after Ramchandra and his family arrived at the spot, the accused threatened all of them. Thereafter, the accused went away to his house. Thereafter, Rajabai went to the Sangola Police Station and lodged report. Thereafter, investigation commenced. The dead body of Bapu was sent for post-mortem. The Doctor conducting the post-mortem observed six injuries on the person of Bapu, which are as under :

1. Punctured wound over right side of neck just below right angle of

Mandible, ant. sterno mastoid oblique and deep downwards injury to right common carotid artery at bifurcation, stab bleeding of size 2 cm. muscle deep.

2. Deformity over Nasal bone with deviation to right side fracture of Nasal bone.
3. Incised wound over upper lip left side of the size 5 cm. 1 cm. 1/2 cm.
4. Incised wound over right lower lip of the size 2 cm. X 1 cm.
5. Contusion over left clavicular region of the size of 10 cm. X 2 cm. with fracture.
6. Contusion over left side over neck of the size 1 cm. 1 cm.

. On internal examination, it was found that the brain was lacerated and right carotid artery was injured. The post-mortem report revealed that the cause of death of Bapu was due to haemorrhagic shock due to head injury with injury to right carotid artery due to stab over right side of neck.

3. After completion of investigation, chargesheet came to be filed. In due course, the case was committed to the Court of Session.

4. The learned Sessions Judge framed the charge against the accused under Section 302 IPC for causing death of Bapu; under Section 307 IPC for causing grievous hurt to Rajabai; under Section 324 IPC for causing hurt to Dhanashri and Kaushalya; and under Section 506 IPC for threatening Rajabai (PW-3), Ramchandra (PW-7) and others with injury to their person. The appellant-accused pleaded not guilty to the said charge and claimed to be tried. His defence is that of total denial and false implication. After going through the evidence adduced by the

prosecution, the learned Sessions Judge convicted and sentenced the appellant, under Section 302 IPC for causing the death of Bapu, under Section 324 IPC for causing hurt to Rajabai and Dhanashri and under Section 506 IPC for threatening the witnesses. The learned IInd Additional Sessions Judge, Pandharpur sentenced the appellant as stated in paragraph 1 above. Hence, this Appeal.

5. We have heard Mr. Talkute, the learned Advocate for the appellant and Mrs. Deshmukh, the learned APP for the State. We have also perused the evidence on record as well as the judgment and order of the learned Sessions Judge. However, after carefully considering the matter, we find no merit in this appeal.

6. In support of the prosecution case, the prosecution has examined PW-3 Rajabai, the widow of deceased Bapu. PW-3 Rajabai has deposed in her examination-in-chief that on the day of the incident, her husband deceased Bapu as usual returned from work. Thereafter, PW-3 Rajabai at about 6:00 p.m. went to the flour mill for

grinding grains. At that time her husband and children were in the house. She returned home after about half an hour. On returning home she saw that the accused Devanand was in her house and he was jostling her daughter Dhanashri (PW-4). In the said incident, Dhanashri sustained injuries on her cheek. PW-3 Rajabai saw that her husband was lying dead on the ground with injuries on his person. Rajabai immediately raised shouts. Therefore, the accused gave threats to her that he would also stab her. The accused-Devanand gave knife blows over the right ear and on both hands of Rajabai. Thereupon, on hearing her shouts her husband's brother Ramchandra (PW-7) reached there alongwith his wife, daughter and son. The accused-Devanand then threatened them.

7. Nothing has been elicited in the cross-examination of PW-3 Rajabai so as to disbelieve her evidence. The evidence of Rajabai is corroborated by the evidence of PW-7 Ramchandra. PW-7 Ramchandra has deposed in his examination-in-chief that Bapu was his elder brother. Bapu was residing on the East side of

his house. One Sada is his cousin and Sada is the father of Sunita (PW-6). Ramchandra has stated that at the time of the incident, he was in his house. When he heard the shouts of Rajabai, he went to her house. His family members followed him. On reaching the house of Rajabai, he saw that accused was assaulting Rajabai. He saw that Bapu was lying in an injured condition inside the house and blood was oozing from the injuries. He also found that Dhanashri was unconscious and Kaushalya had also been assaulted.

8. Mr.Talkute submitted that the evidence of PW-7 Ramchandra cannot be relied upon because the incident, according to PW-3 Rajabai, lasted for 2-3 minutes, in such case after Rajabai raised shouts, it was not possible for PW-7 Ramchandra to reach the house of Rajabai and witness the accused assaulting Rajabai. Moreover, Mr.Talkute has submitted that the evidence of PW-3 Rajabai and PW-7 Ramchandra is discrepant and hence the evidence of these two witnesses cannot be relied upon. As far as the first aspect is concerned, no doubt in her evidence PW-3 Rajabai has stated that

the incident lasted for few minutes. However, it is seen that Rajabai is a poor illiterate villager who is residing in the village. Her occupation was agriculture and grazing cattle. Hence, this witness must have given an approximate time. It cannot be expected that a witness would give the precise time period. It is also to be borne in mind that the time sense of individuals varies from person to person. Moreover, PW-7 Ramchandra's house was not so far away that he could not reach the house of Rajabai within a span of a couple of minutes. Thus, in our view, it was very much possible for Ramchandra to reach the house of Rajabai after hearing her shouts and witness the later-part of the incident.

9. On the second aspect that there are discrepancies between the evidence of PW-3 Rajabai and PW-7 Ramchandra, we find that there is only one discrepancy i.e. PW-7 Ramchandra says that the accused had caught hold of the hair of Rajabai and assaulted her, whereas PW-3 Rajabai does not state that the accused had caught hold of her hair. It is pertinent to note that on the point

of assault on Rajabai there is no discrepancy in the evidence of these two witnesses. As stated earlier, Rajabai is a poor, illiterate villager and hence she may not have stated the incident in great detail. In any event, in our opinion, this discrepancy is of a minor nature and it does not go to the root of the prosecution case. Discrepancies are bound to occur in the evidence of witnesses, but, every discrepancy does not shake the prosecution case. Only when the discrepancy in the evidence of witnesses goes to the root of the prosecution case only then it can be said that the evidence of that witness is not trustworthy and hence it cannot be relied upon. In this context useful reference may be made to the decision of the Supreme Court in the case of **Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat** reported in **AIR 1983 S.C. 753**. The Supreme Court in the above decision observed as under:-

. "Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious :-

(1) By and large a witness cannot be

expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

- (2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.
- (3)
- (4)
- (5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.
- (6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.
- (7) A witness, though wholly truthful, is liable to be overawed by the Court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of

the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is given a truthful and honest account of the occurrence witnessed by him - perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

6. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, therefore cannot be annexed with undue importance. More so when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses."

. As stated earlier, as far as the evidence of PW-3 Rajabai is concerned, we find nothing in the cross-examination so as to disbelieve her evidence.

10. Besides PW-3 Rajabai who is an injured witness, the prosecution has also examined PW-4 Dhanashri, who is the daughter of deceased Bapu and Rajabai. PW-4 Dhanashri is also an injured witness. No doubt Dhanashri has stated in detail about the incident. However, we have great hesitation in relying on her evidence. PW-4 Dhanashri is a child witness and in her cross-examination she has stated that she has been

tutored by her mother Rajabai before giving her statement as well as before deposing before the Court to indict the accused. In view of this admission on the part of PW-4 Dhanashri, the evidence of PW-4 Dhanashri would have to be brushed aside and no reliance can be placed on her evidence.

11. Mr.Talkute, has submitted that there was no intention on the part of the accused to cause death of Bapu and hence the case would not fall under Section 302 of IPC, but, it would fall under Section 304(II) of IPC. In support of this contention, Mr.Talkute made two submissions. Mr.Talkute's first submission was that it was a case of death caused during sudden fight. However, there is no evidence on record to show that any fight took place between the accused and the deceased. Infact, the accused has entered the house of the deceased Bapu armed with deadly weapon like knife and thereafter he has assaulted the deceased. Not only he has assaulted the deceased, but, the accused has also assaulted the minor daughter of the deceased as well as his wife

PW-3 Rajabai. In the absence of any material on record to show that there was any sudden quarrel or sudden fight, it cannot be said that the case of the appellant would fall under Section 304(ii) of IPC.

. The second submission made by Mr. Talkute was that the injuries sustained by deceased Bapu do not show that the accused intended to cause the death of Bapu. We have already stated in detail above about the injuries on the body of deceased Bapu. From the injuries as seen from the post-mortem notes, it is clear that Bapu died a homicidal death and from the evidence on record, it is clear that the appellant is responsible for the death of Bapu. The cause of death of Bapu was due to haemorrhagic shock due to head injury with injury to right carotid artery due to stab over right side of neck. Out of the six bodily injuries caused on the person of deceased Bapu, two of the injuries are on the vital part of the body i.e. on neck and head. The stab injury on the neck, shows the force used while giving the said injuries. On account of this injury the

mandible was fractured. The second injury i.e. the head injury, was caused on account of assault on the face of Bapu. The said assault caused fracture of nasal bone as well as nasal wall. This injury has resulted in internal injuries to the brain. From the nature of injuries found on the body of Bapu, the case would most certainly fall under Section 300 of IPC. Even assuming for the sake of argument that the accused did not have the intention to cause the death of Bapu, it can certainly be said that the accused had knowledge that the injuries caused by him are likely to cause the death of Bapu. Though in our opinion in the present case the accused has caused the injuries to Bapu with the intention of causing death. Thus, we find no merit in this submission.

12. Lastly Mr.Talkute has submitted that the incident had occurred at about 7:00 p.m. and as the incident took place in the night time, it must have been dark there and hence it was not possible for the witnesses to identify the accused person. The incident has taken place on 22nd of August, 2001. At that time sunset would be at about 6:45

p.m.. In our view, at the time of the incident the darkness would not be such that the assailant could not have been identified. Moreover, the accused was from the same village, infact he resided very close to the house of the witnesses, as such, there would be no difficulty for PW-3 Rajabai and PW-7 Ramchandra to identify the accused as the assailant. Thus, even though it was night time, in our view, it would very much possible for PW-3 Rajabai and PW-7 Ramchandra to identify the accused as the assailant. In this context useful reference may be made to a decision of this Court in the case of **Pandit Ramchandra Mulik & Ors. Vs. State of Maharashtra** reported in **2001 Vol.103(1) Bom.L.R. 806**. In the said decision, it has been held that it is common knowledge that known persons, even in the absence of light, can be recognised by their gait, timbre of voice etc.. In such circumstances, we find no merit in the submission that PW-3 Rajabai or PW-7 Ramchandra could not have identified the accused as the assailant.

13. It is also the prosecution case that blood

stained shirt, blood stained knife and blood stained stick came to be seized at the instance of the accused. The C.A. report shows that there are blood stains on the shirt, stick and knife. However, we are not inclined to rely on this piece of evidence as there is no evidence to show that when the articles came to be seized they were sealed.

14. As stated earlier, there are two eye witnesses to the incident i.e. Rajabai and Ramchandra, whose evidence we find to be worthy of reliance.

15. Thus, we find that there is sufficient material on record which connects the appellant with the crime. The evidence on record, especially that of PW-3 Rajabai, is cogent and convincing. From the evidence on record, the offences punishable under Sections 302, 324 & 506 of IPC are established.

16. In this view of the matter, the appeal is dismissed. The conviction and sentence dated

17.07.2002 recorded by the learned IInd Additional Sessions Judge at Pandharpur in Sessions Case No.118 of 2001 is confirmed. The appellant is in jail. He shall serve out the sentence.

(SMT.V.K.TAHILRAMANI, J)

(S.B.MHASE, J.)